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§ 210.49 Implementation of Commission action.

(a) *Service of Commission determination upon the parties.* A Commission determination pursuant to § 210.45(c) or a termination on the basis of a licensing or other agreement, a consent order or an arbitration agreement pursuant to § 210.21(b), (c) or (d), respectively, shall be served upon each party to the investigation.

(b) *Publication and transmittal to the President.* A Commission determination that there is a violation of section 337 of the Tariff Act of 1930 or that there is reason to believe that there is a violation, together with the action taken relative to such determination under § 210.50(a) or § 210.50(d) of this part, or the modification or rescission in whole or in part of an action taken under § 210.50(a), shall promptly be published in the FEDERAL REGISTER. It shall also be promptly transmitted to the President or an officer assigned the functions of the President under 19 U.S.C. 1337(j)(1)(B), 1337(j)(2), and 1337(j)(4), together with the record upon which the determination and the action are based.

(c) *Enforceability of Commission action.* Unless otherwise specified, any Commission action other than an exclusion order or an order directing seizure and forfeiture of articles imported in violation of an outstanding exclusion order shall be enforceable upon receipt by the affected party of notice of such action. Exclusion orders and seizure and forfeiture orders shall be enforceable upon receipt of notice thereof by the Secretary of the Treasury.

(d) *Finality of affirmative Commission action.* If the President does not disapprove the Commission's action within a 60-day period beginning the day after a copy of the Commission's action is delivered to the President, or if the President notifies the Commission before the close of the 60-day period that he approves the Commission's action, such action shall become final the day after the close of the 60-day period or the day the President notifies the Commission of his approval, as the case may be.

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(e) *Duration.* Final Commission action shall remain in effect as provided in subpart I of this part.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67628, Dec. 30, 1994; 73 FR 38325, July 7, 2008]

§ 210.50 Commission action, the public interest, and bonding by respondents.

(a) During the course of each investigation under this part, the Commission shall—

(1) Consider what action (general or limited exclusion of articles from entry or a cease and desist order, or exclusion of articles from entry under bond or a temporary cease and desist order), if any, it should take, and, when appropriate, take such action;

(2) Consult with and seek advice and information from the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other departments and agencies as it considers appropriate, concerning the subject matter of the complaint and the effect its actions (general or limited exclusion of articles from entry or a cease and desist order, or exclusion of articles from entry under bond or a temporary cease and desist order) under section 337 of the Tariff Act of 1930 shall have upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers;

(3) Determine the amount of the bond to be posted by a respondent pursuant to section 337(j)(3) of the Tariff Act of 1930 following the issuance of temporary or permanent relief under section 337(d), (e), (f), or (g) of the Tariff Act of 1930, taking into account the requirement of section 337(e) and (j)(3) that the amount of the bond be sufficient to protect the complainant from any injury.

(4) Receive submissions from the parties, interested persons, and other Government agencies and departments with respect to the subject matter of paragraphs (a)(1), (a)(2), and (a)(3) of this section. After a recommended determination on remedy is issued by the presiding administrative law judge, the

parties are requested to submit to the Commission, within 30 days from service of the recommended determination, any information relating to the public interest, including any updates to the information requested by §§210.8(b) and (c) and 210.14(f). Any submissions under this section are limited to 5 pages, inclusive of attachments.

(i) When the matter under consideration pursuant to paragraph (a)(1) of this section is whether to grant some form of permanent relief, the submissions described in paragraph (a)(4) of this section shall be filed by the deadlines specified in the Commission notice issued pursuant to §210.46(a).

(ii) When the matter under consideration is whether to grant some form of temporary relief, such submissions shall be filed by the deadlines specified in §210.67(b), unless the Commission orders otherwise.

(iii) Any submission from a party shall be served upon the other parties in accordance with §210.4(g). The parties' submissions, as well as any filed by interested persons or other agencies shall be available for public inspection in the Office of the Secretary.

(iv) The Commission will consider motions for oral argument or, when necessary, a hearing with respect to the subject matter of this section, except that no hearing or oral argument will be permitted in connection with a motion for temporary relief.

(b)(1) With respect to an administrative law judge's authorization to take evidence or other information and to hear arguments from the parties and other interested persons on the issues of appropriate Commission action, the public interest, and bonding by the respondents for purposes of an initial determination on temporary relief, see §§210.61, 210.62, and 210.66(a). For purposes of the recommended determination required by §210.42(a)(1)(ii), an administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons on the issues of appropriate Commission action and bonding by the respondents upon order of the Commission. Unless the Commission orders otherwise, and except as provided for in paragraph (b)(2) of this section, an administrative law judge

shall not take evidence on the issue of the public interest for purposes of the recommended determination under §210.42(a)(1)(ii).

(2) Regarding terminations by settlement agreement, consent order, or arbitration agreement under §210.21 (b), (c) or (d), the parties may file statements regarding the impact of the proposed termination on the public interest, and the administrative law judge may hear argument, although no discovery may be compelled with respect to issues relating solely to the public interest. Thereafter, the administrative law judge shall consider and make appropriate findings in the initial determination regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

(c) No general exclusion from entry of articles shall be ordered under paragraph (a)(1) of this section unless the Commission determines that—

(1) Such exclusion is necessary to prevent circumvention of an exclusion order limited to products of named persons; or

(2) There is a pattern of violation of section 337 of the Tariff Act of 1930 and it is difficult to identify the source of infringing products.

(d) *Forfeiture or return of respondents' bonds.* (1)(i) If one or more respondents posts a bond pursuant to 19 U.S.C. 1337(e)(1) or 1337(j)(3), proceedings to determine whether a respondent's bond should be forfeited to a complainant in whole or part may be initiated upon the filing of a motion, addressed to the administrative law judge who last presided over the investigation, by a complainant within 90 days after the expiration of the period of Presidential review under 19 U.S.C. 1337(j). If that administrative law judge is no longer employed by the Commission, the motion shall be addressed to the Commission.

(ii) A respondent may file a motion addressed to the administrative law judge who last presided over the investigation for the return of its bond within 90 days after the expiration of the Presidential review period under 19 U.S.C. 1337(j). If that administrative

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law judge is no longer employed by the Commission, the motion shall be addressed to the Commission.

(2) Any nonmoving party may file a response to a motion filed under paragraph (d)(1) of this section within 15 days after filing of the motion, unless otherwise ordered by the administrative law judge.

(3) A motion for forfeiture or return of a respondent's bond in whole or part will be adjudicated by the administrative law judge in an initial determination with a 45-day effective date, which shall be subject to review under the provisions of §§210.42 through 210.45. In determining whether to grant the motion, the administrative law judge and the Commission will be guided by practice under Rule 65 of the Federal Rules of Civil Procedure (taking into account that the roles of the parties are reversed in this instance).

(4) If the Commission determines that a respondent's bond should be forfeited to a complainant, and if the bond is being held by the Secretary of the Treasury, the Commission Secretary shall promptly notify the Secretary of the Treasury of the Commission's determination.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67628, Dec. 30, 1994; 73 FR 38326, July 7, 2008; 76 FR 64809, Oct. 19, 2011]

§210.51 Period for concluding investigation.

(a) *Permanent relief.* Within 45 days after institution of the investigation, the administrative law judge shall issue an order setting a target date for completion of the investigation. If the target date does not exceed 16 months from the date of institution of the investigation, the order of the administrative law judge shall be final and not subject to interlocutory review. If the target date exceeds 16 months, the order of the administrative law judge shall constitute an initial determination. After the target date has been set, it can be modified by the administrative law judge for good cause shown before the investigation is certified to the Commission or by the Commission after the investigation is certified to the Commission. Any extension of the target date beyond 16 months, before the investigation is certified to the

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Commission, shall be by initial determination.

(b) *Temporary relief.* The temporary relief phase of an investigation shall be concluded and a final order issued no later than 90 days after publication of the notice of investigation in the FEDERAL REGISTER, unless the temporary relief phase of the investigation has been designated “more complicated” by the Commission or the presiding administrative law judge pursuant to §210.22(c) and §210.60. If that designation has been made, the temporary relief phase of the investigation shall be concluded and a final order issued no later than 150 days after publication of the notice of investigation in the FEDERAL REGISTER.

(c) *Computation of time.* In computing the deadlines imposed in paragraph (b) of this section, there shall be excluded any period during which the investigation is suspended pursuant to §210.23.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67629, Dec. 30, 1994; 61 FR 43432, Aug. 23, 1996; 73 FR 38326, July 7, 2008]

Subpart H—Temporary Relief

§210.52 Motions for temporary relief.

Requests for temporary relief under section 337 (e) or (f) of the Tariff Act of 1930 shall be made through a motion filed in accordance with the following provisions:

(a) A complaint requesting temporary relief shall be accompanied by a motion setting forth the complainant's request for such relief. In determining whether to grant temporary relief, the Commission will apply the standards the U.S. Court of Appeals for the Federal Circuit uses in determining whether to affirm lower court decisions granting preliminary injunctions. The motion for temporary relief accordingly must contain a detailed statement of specific facts bearing on the factors the Federal Circuit has stated that a U.S. District Court must consider in granting a preliminary injunction.

(b) The motion must also contain a detailed statement of facts bearing on:

(1) Whether the complainant should be required to post a bond as a prerequisite to the issuance of temporary relief; and